

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

09-cv-034
United States District Court for the State of New Hampshire

2010 OCT 15 A 11:47

Prealou J. Roberts

V.

Wentworth Douglass Hospital
PrimeCare Medical Services
Tracy Warren

Order

Defendant Wentworth Douglass Hospital (WDH) has filed a Renewed Motion for Dismissal of Panel Proceeding, pursuant to RSA 519-B:4, VII (a)(1&2). This motion is predicated on plaintiff's failure to comply with multiple discovery orders made by the undersigned. WDH supplemented its motion by an amendment alleging a failure of the plaintiff to provide an expert disclosure as ordered. Both the motion and the amendment is joined by defendants PrimeCare Medical Services, Inc. and Tracy Warren, RN. No objection has been filed by the plaintiff.

This issue has a significant history. Following a telephonic structuring conference, a structuring order issued November 10, 2009 which in part ordered plaintiff's expert disclosure by March 1, 2010 and completion of all discovery by June 1, 2010. A panel hearing was scheduled by the court for July 6, 2010. On or about January 8, 2010 WDH filed a Motion to Compel Discovery based on plaintiff's failure to properly respond to interrogatories served on him by WDH. On February 24, 2010 the undersigned conducted a telephonic hearing on that motion and issued an order dated March 1, 2010 which required the plaintiff to provide complete written answers to a number of interrogatories, excused him from answering others and required plaintiff to execute and return certain authorizations requested by WDH. The plaintiff was ordered to comply with this order by March 15, 2010, a date which was selected by the plaintiff. (A copy of the March 1, 2010 order is attached.)

On or about April 14, 2010 WDH filed a Motion for Dismissal of Panel Proceeding again based on plaintiff's multiple failures to comply with discovery orders including a failure to provide an expert disclosure, incomplete interrogatory answers and a failure to provide the signed authorizations. The plaintiff again failed to object. That motion was joined by defendants PrimeCare Medical Inc. and Tracy Warren, RN. A record hearing on this motion was held at the US District Court on May 14, 2010 at which the plaintiff appeared and represented himself. An order issued May 14, 2010 (copy attached) denying the motion to dismiss without prejudice and required the plaintiff to provide complete

interrogatory answers and certain records by June 1, 2010, provide completed medical authorizations by May 20, 2010, and provide a complete expert disclosure by June 15, 2010. Paragraph 6 of that order noted (and the record of the hearing will verify) that these dates were agreed to by the plaintiff and he was clearly advised by the undersigned as panel chair on several occasions that his failure to comply with this order would result in a dismissal of his action if requested by the defendants.

Based on WDH's renewed motion to dismiss and the amendment to which the plaintiff has not objected it appears that the plaintiff has completely failed to comply with the order of March 14, 2010. Based on information furnished by defendants' counsel, and confirmed by inquiry of the Superior Court Center, it appears that the plaintiff has been arrested and is incarcerated at the Valley Street Jail in Manchester, New Hampshire. The panel chair does not find that these facts, if true, would excuse the plaintiff from complying with the orders referred to above.

RSA 519-B:4, IV (a)(1) authorizes the dismissal of the proceeding on failure of the plaintiff to prosecute or comply with orders of the chairperson after the plaintiff has had the opportunity to be heard and show good cause. The chairperson finds that the hearing held on May 14, 2010 satisfies that requirement. Accordingly pursuant to RSA 591-B:4 VII (a)(2), this panel proceeding is dismissed with prejudice.

So ordered.

Date: 10/14/10


Harold W. Perkins, Chairman